Of Counsel:
ALSTON HUNT FLOYD & ING
Attorneys At Law
A Law Corporation

LOUISE K. Y. ING 2394-0
GLENN T. MELCHINGER 7135-0
ROBERT J. MARTIN, JR. 7981-0
1001 Bishop Street, Suite 1800
Honolulu, Hawai`i 96813
Telephone: (808) 524-1800
Facsimile: (808) 524-4591
E-mail: ling@ahfi.com
gtm@ahfi.com
rmartin@ahfi.com

Attorneys for Defendant
MARRIOTT INTERNATIONAL, INC.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI`I

VINCENT KHOURY TYLOR and VINCENT SCOTT TYLOR, Plaintiffs, v. MARRIOTT INTERNATIONAL, INC., a Delaware Corporation, dba COURTYARD BY MARRIOTT WAIKIKI BEACH AND/OR COURTYARD WAIKIKI BEACH; JOHN DOES 1-10; JANE DOES 1-10; DOE CORPORATIONS 1-10; DOE PARTNERSHIPS 1-10; AND DOES ASSOCIATIONS 1-10, Defendants.	Case No. CV 14-00069 JMS-RLP **DEFENDANT MARRIOTT INTERNATIONAL, INC.'S ANSWER TO *COMPLAINT FOR COPYRIGHT INFRINGEMENT AND DIGITAL MILLENNIUM COPY RIGHT ACT VIOLATIONS***; DEMAND FOR JURY TRIAL; CERTIFICATE OF SERVICE [Document No. 1]

DEFENDANT MARRIOTT INTERNATIONAL, INC.'S ANSWER TO *COMPLAINT FOR COPYRIGHT INFRINGEMENT AND DIGITAL MILLENNIUM COPY RIGHT ACT VIOLATIONS*

Defendant Marriott International, Inc. ("Defendant" or "Marriott") hereby files this Answer to the Complaint for Copyright Infringement and Digital Millennium Copyright Act Violations ("Complaint") of Plaintiffs Vincent Khoury Tylor and Vincent Scott Tylor ("Plaintiffs") and states as set forth below.

PARTIES

1. Marriott lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 1 of the Complaint, and on that basis denies all the allegations therein.

2. Marriott lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph 2 of the Complaint, and on that basis denies all the allegations therein.

3. Marriott denies all the allegations in paragraph 3 of the Complaint.

4. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph 4 of the Complaint, and on that basis denies all the allegations therein.

JURISDICTION AND VENUE

In response to the allegations in paragraph 5, Defendant admits that the Complaint purports to initiate an action for copyright infringement, but denies that it has committed the infringement alleged in the Complaint and all other allegations in that paragraph.

5. In response to the allegations in paragraph 6, Defendant admits that this Court has jurisdiction over suits for copyright infringement.

6. In response to the allegations in paragraph 7, for the purpose of this action only, Defendant admits that venue is proper in this district, but denies that this district is the most convenient forum.

JURISDICTION AND VENUE

7. Marriott denies all the allegations in paragraph 8 of the Complaint.

8. Marriott denies all the allegations in paragraph 9 of the Complaint.

9. Marriott denies all the allegations in paragraph 10 of the Complaint.

10. Marriott denies all the allegations in paragraph 11 of the Complaint.

11. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph 12 of the Complaint, and on that basis denies all the allegations therein.

12. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph 13 of the Complaint, and on that basis denies all the allegations therein.

13. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph 14 of the Complaint, and on that basis denies all the allegations therein.

14. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph 15 of the Complaint, and on that basis denies all the allegations therein.

15. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph 16 of the Complaint, and on that basis denies all the allegations therein.

16. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph 17 of the Complaint, and on that basis denies all the allegations therein.

17. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph 18 of the Complaint, and on that basis denies all the allegations therein.

18. Marriott denies all the allegations in paragraph 19 of the Complaint.

19. Marriott denies all the allegations in paragraph 20 of the Complaint.

20. Marriott denies all the allegations in paragraph 21 of the Complaint.

21. Marriott denies all the allegations in paragraph 22 of the Complaint.

22. Marriott denies all the allegations in paragraph 23 of the Complaint.

23. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph 24 of the Complaint, and on that basis denies all the allegations therein.

24. Marriott denies all the allegations in paragraph 25 of the Complaint.

25. Marriott denies all the allegations in paragraph 26 of the Complaint.

26. Marriott denies all the allegations in paragraph 27 of the Complaint.

FIRST CAUSE OF ACTION: ALLEGED COPYRIGHT INFRINGEMENT

27. In response to the allegations in paragraph 28, Defendant incorporates by reference its responses to paragraphs 1-27 of the Complaint.

28. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph 29 of the Complaint.

29. Marriott denies all the allegations in paragraph 30 of the Complaint.

30. Marriott denies all the allegations in paragraph 31 of the Complaint.

31. Marriott denies all the allegations in paragraph 32 of the Complaint.

32. Marriott denies all the allegations in paragraph 33 of the Complaint.

33. Marriott denies all the allegations in paragraph 34 of the Complaint.

34. Marriott denies all the allegations in paragraph 35 of the Complaint.

35. Marriott denies all the allegations in paragraph 36 of the Complaint.

36. Marriott denies all the allegations in paragraph 37 of the Complaint.

37. Marriott denies all the allegations in paragraph 38 of the Complaint.

38. Marriott denies all the allegations in paragraph 39 of the Complaint.

39. Marriott denies all the allegations in paragraph 40 of the Complaint.

40. Marriott denies all the allegations in paragraph 41 of the Complaint.

SECOND CAUSE OF ACTION:
ALLEGED DIGITAL MILLENNIUM COPYRIGHT ACT VIOLATIONS

41. In response to the allegations in paragraph 42 Defendant incorporates by reference its responses to paragraphs 1-41 of the Complaint.

42. Marriott denies all the allegations in paragraph 43 of the Complaint.

43. Marriott denies all the allegations in paragraph 44 of the Complaint.

44. Marriott denies all the allegations in paragraph 45 of the Complaint.

45. Marriott denies all the allegations in paragraph 46 of the Complaint.

46. Marriott denies all the allegations in paragraph 47 of the Complaint.

47. Marriott denies all the allegations in paragraph 48 of the Complaint.

48. Any allegations not expressly admitted herein are hereby denied.

RESPONSE TO PLAINTIFF'S PRAYER FOR RELIEF

To the extent a response to Plaintiffs' Prayer for Relief is required; Defendant denies that Plaintiffs are entitled to any of the prayed-for relief.

AFFIRMATIVE DEFENSES

Defendant incorporates by reference the foregoing paragraphs in their entirety and asserts the following affirmative defenses. By asserting these defenses, Defendant does not admit that it bears the burden of proof on any issue and does not accept any burden it would not otherwise bear. Defendant reserves the right to amend this Answer with additional defenses as further information becomes available.

FIRST DEFENSE
(Failure to State a Claim)

49. The Complaint fails to state a claim against Defendant on which relief can be granted.

SECOND DEFENSE
(Fair Use)

50. Plaintiffs' claims fail in whole or in part because any use of Plaintiff's copyrighted works did not constitute infringement and was protected by 17 U.S.C. § 107.

THIRD DEFENSE
(No Damages)

51. Plaintiffs' claims fail in whole or in part because Plaintiffs have not suffered any damages as a result of any conduct by Defendant.

FOURTH DEFENSE
(Comparative Fault)

52. Any damages suffered by Plaintiffs were caused in whole or in part due to Plaintiffs' own fault or negligence.

FIFTH DEFENSE
(*De Minimus* Infringement)

53. Upon information and belief, Plaintiffs' claims are subject to a defense of *de minimus* infringement.

SIXTH DEFENSE
(Abandonment)

54. Upon information and belief, Plaintiffs abandoned any copyright in the subject photographs and/or the subject photographs are in the public domain.

SEVENTH DEFENSE
(Defective Registrations)

55. Upon information and belief, the registrations of the copyrights at issue herein are inapplicable or defective. To the extent that the copyright registrations relied upon by Plaintiffs are inapplicable or defective, this Court lacks jurisdiction over the subject matter of this action.

EIGHTH DEFENSE
(Innocent Infringement)

56. To the extent that there was any copyright infringement or violation of 17 U.S.C. § 1202, such infringement or violation was innocent and done without knowledge.

NINTH DEFENSE
(Consent / Implied License)

57. Upon information and belief, Plaintiffs' claims are barred because Plaintiffs consented to the use of their works.

58. Upon information and belief, Plaintiffs' claims are barred because Plaintiffs impliedly licensed the works.

TENTH DEFENSE
(Failure to Mitigate)

59. Upon information and belief, Plaintiffs failed to mitigate their damages and accordingly may be barred, in whole or in part, from recovery herein.

ELEVENTH DEFENSE
(Equitable Defenses)

60. Plaintiffs' claims fail in whole or in part because Plaintiffs are barred from recovering due to the equitable doctrines of laches, unclean hands, or equitable estoppel.

TWELFTH DEFENSE
(No Irreparable Harm)

61. Plaintiffs are not entitled to injunctive relief because any alleged injury is not immediate or irreparable, and Plaintiffs have an adequate remedy at law.

THIRTEENTH DEFENSE
(Defendant's Limited Role As Franchisor)

62. At no time relevant to Plaintiff's Complaint did Defendant (1) own, operate, or manage the Courtyard by Marriott Waikiki Beach located at 400 Royal Hawaiian Avenue, Honolulu, Hawaii (the "Hotel") or any part thereof, including the commercial websites identified in the Complaint, or (2) hire, employ, compensate, or otherwise direct or control the actions of any of the Hotel's employees. Marriott's relationship with the Hotel is limited to that of a franchisor, and the franchisee is an independent contractor. No partnership exists between Marriott and the franchisee. The franchisee is not the agent, legal representative or employee of Marriott, and it is separate and apart from and independent of Marriott.

FOURTEENTH DEFENSE
(Copyright Misuse)

63. Plaintiffs have attempted to expand improperly the statutory copyright monopoly in the subject photographs in order to gain control over areas outside the scope of the monopoly, thus constituting copyright misuse.

Dated: Honolulu, Hawai`i, March 17, 2014.

/s/ Glenn T. Melchinger
LOUISE K. Y. ING
GLENN T. MELCHINGER
ROBERT J. MARTIN, JR.

Attorneys for Defendant
MARRIOTT INTERNATIONAL, INC.